

IC 6-7-2

Chapter 2. Tobacco Products Tax

IC 6-7-2-1

"Department"

Sec. 1. As used in this chapter, "department" refers to the department of state revenue and includes its employees and agents.
As added by P.L.96-1987, SEC.7.

IC 6-7-2-2

"Distributor"

Sec. 2. As used in this chapter, "distributor" means a person who:

- (1) manufactures, sells, barter, exchanges, or distributes tobacco products in Indiana to retail dealers for the purpose of resale;
- (2) purchases tobacco products directly from a manufacturer of tobacco products; or
- (3) purchases for resale tobacco products from a wholesaler, jobber, or distributor outside of Indiana who is not a distributor holding a license issued under this chapter.

As added by P.L.96-1987, SEC.7.

IC 6-7-2-2.1

"Moist snuff"

Sec. 2.1. As used in this chapter, "moist snuff" means any finely cut, ground, or powdered tobacco that is not intended to be:

- (1) smoked; or
- (2) placed in the nasal cavity.

As added by P.L.172-2011, SEC.81.

IC 6-7-2-3

"Person"

Sec. 3. As used in this chapter, "person" has the meaning set forth in IC 6-7-1-4.

As added by P.L.96-1987, SEC.7.

IC 6-7-2-4

"Retail dealer"

Sec. 4. As used in this chapter, "retail dealer" means a person engaged in the business of selling tobacco products to ultimate consumers.

As added by P.L.96-1987, SEC.7.

IC 6-7-2-5

"Tobacco product"

Sec. 5. As used in this chapter, "tobacco product" means:

- (1) any product made from tobacco, other than a cigarette (as defined in IC 6-7-1-2), that is made for smoking, chewing, or

both; or
(2) snuff, including moist snuff.
As added by P.L.96-1987, SEC.7. Amended by P.L.172-2011, SEC.82.

IC 6-7-2-6

"Wholesale price"

Sec. 6. As used in this chapter, "wholesale price" means the net price shown on an invoice and at which the manufacturer of the tobacco products sells tobacco products to distributors, excluding any discount or other reduction that is not shown on the invoice.

As added by P.L.96-1987, SEC.7. Amended by P.L.155-2012, SEC.2.

IC 6-7-2-7

Tax on distribution of tobacco products; rate; time of imposition; findings by general assembly

Sec. 7. (a) A tax is imposed on the distribution of tobacco products in Indiana at the rate of:

- (1) twenty-four percent (24%) of the wholesale price of tobacco products other than moist snuff; or
- (2) for moist snuff, forty cents (\$0.40) per ounce, and a proportionate tax at the same rate on all fractional parts of an ounce. If the tax calculated for a fractional part of an ounce carried to the third decimal place results in the numeral in the third decimal place being greater than four (4), the amount of the tax shall be rounded to the next additional cent.

(b) The distributor of the tobacco products, including a person that sells tobacco products through an Internet web site, is liable for the tax imposed under subsection (a). The tax is imposed at the time the distributor:

- (1) brings or causes tobacco products to be brought into Indiana for distribution;
 - (2) manufactures tobacco products in Indiana for distribution;
- or
- (3) transports tobacco products to retail dealers in Indiana for resale by those retail dealers.

(c) The Indiana general assembly finds that the tax rate on smokeless tobacco should reflect the relative risk between such products and cigarettes.

As added by P.L.96-1987, SEC.7. Amended by P.L.192-2002(ss), SEC.138; P.L.234-2007, SEC.201; P.L.172-2011, SEC.83; P.L.205-2013, SEC.129.

IC 6-7-2-8

Distributor's license

Sec. 8. (a) A distributor, including a person that sells tobacco products through an Internet web site, must obtain a license under this section before it distributes tobacco products in Indiana. The department shall issue licenses to applicants that qualify under this

section. A license issued under this section is valid for one (1) year unless revoked or suspended by the department and is not transferable.

(b) An applicant for a license under this section must submit proof to the department of the appointment of an agent for service of process in Indiana if the applicant is:

- (1) an individual whose principal place of residence is outside Indiana; or
- (2) a person, other than an individual, that has its principal place of business outside Indiana.

(c) To obtain or renew a license under this section, a person must:

- (1) submit, for each location where it intends to distribute tobacco products, an application that includes all information required by the department;
- (2) pay a fee of twenty-five dollars (\$25) at the time of application; and
- (3) at the time of application, post a bond, issued by a surety company approved by the department, in an amount not less than one thousand dollars (\$1,000) and conditioned on the applicant's compliance with this chapter.

(d) If business is transacted at two (2) or more places by one (1) distributor, a separate license must be obtained for each place of business.

(e) Each license must be numbered, show the name and address of the distributor, and be posted in a conspicuous place at the place of business for which it is issued.

(f) If the department determines that a bond provided by a licensee is inadequate, the department may require a new bond in the amount necessary to fully protect the state.

As added by P.L.96-1987, SEC.7. Amended by P.L.205-2013, SEC.130.

IC 6-7-2-9

Change of location; license reissuance

Sec. 9. A distributor that changes its place of business shall return its license, and the department shall issue, free of charge, a new license for the new place of business.

As added by P.L.96-1987, SEC.7.

IC 6-7-2-10

Surrender of license; refund

Sec. 10. A license issued under this chapter may be surrendered to the department at any time before its expiration, and the department shall refund an amount of money that bears the same proportion to the fee originally paid as the unexpired period of the permit bears to one (1) year. No refund may be allowed if a license is suspended or revoked, and no refund may be made that is:

- (1) greater than seventy-five dollars (\$75); or
- (2) less than twenty-five dollars (\$25).

As added by P.L.96-1987, SEC.7.

IC 6-7-2-11

Revocation or suspension of license

Sec. 11. The department:

- (1) may revoke or suspend a license issued under this chapter for any violation of this chapter or IC 6-7-1-18 by the licensee; and
- (2) may not issue a license under this chapter to an applicant within six (6) months after the revocation of that applicant's license.

As added by P.L.96-1987, SEC.7. Amended by P.L.252-2003, SEC.3.

IC 6-7-2-12

Electronic filing of returns and remitting of taxes

Sec. 12. Before the fifteenth day of each month, each distributor liable for the tax imposed by this chapter shall:

- (1) file a return with the department that includes all information required by the department including, but not limited to:
 - (A) name of distributor;
 - (B) address of distributor;
 - (C) license number of distributor;
 - (D) invoice date;
 - (E) invoice number;
 - (F) name and address of person from whom tobacco products were purchased or name and address of person to whom tobacco products were sold;
 - (G) the wholesale price for tobacco products other than moist snuff; and
 - (H) for moist snuff, the weight of the moist snuff; and
- (2) pay the tax for which it is liable under this chapter for the preceding month minus the amount specified in section 13 of this chapter.

All returns required to be filed and taxes required to be paid under this chapter must be made in an electronic format prescribed by the department.

As added by P.L.96-1987, SEC.7. Amended by P.L.172-2011, SEC.84; P.L.166-2014, SEC.34.

IC 6-7-2-13

Collection allowance

Sec. 13. A distributor that files a complete return and pays the tax due within the time specified in section 12 of this chapter is entitled to deduct and retain from the tax a collection allowance of six-thousandths (0.006) of the amount due. If a distributor files an incomplete report, the department may reduce the collection allowance by an amount that does not exceed the lesser of:

- (1) ten percent (10%) of the collection allowance; or
- (2) fifty dollars (\$50).

As added by P.L.96-1987, SEC.7. Amended by P.L.192-2002(ss), SEC.139.

IC 6-7-2-14

Credit or refund of taxes

Sec. 14. The department shall credit or refund to a distributor the tax paid under this chapter on tobacco products that are:

- (1) shipped outside Indiana;
- (2) returned to the manufacturer; or
- (3) destroyed by the distributor in the presence of an employee or agent of the department.

As added by P.L.96-1987, SEC.7.

IC 6-7-2-14.5

Deduction for certain receivables

Sec. 14.5. (a) In determining the amount of tax imposed by this chapter that a distributor must remit under section 12 of this chapter, the distributor shall, subject to subsections (c) and (d), deduct from the distributor's wholesale income subject to the tax imposed by this chapter that is derived from wholesale transactions made during a particular reporting period an amount equal to the distributor's receivables that:

- (1) resulted from wholesale transactions on which the distributor has previously paid the tax imposed by this chapter to the department; and
- (2) were written off as an uncollectible debt for federal tax purposes under Section 166 of the Internal Revenue Code during the particular reporting period.

(b) If a distributor deducts a receivable under subsection (a) and subsequently collects all or part of that receivable, the distributor shall, subject to subsection (d)(5), include the amount collected as part of the distributor's wholesale income subject to the tax imposed by this chapter for the particular reporting period in which the distributor makes the collection.

(c) As used in this subsection, "affiliated group" means any combination of the following:

- (1) An affiliated group within the meaning provided in Section 1504 of the Internal Revenue Code (except that the ownership percentage in Section 1504(a)(2) of the Internal Revenue Code shall be determined using fifty percent (50%) instead of eighty percent (80%)) or a relationship described in Section 267(b)(11) of the Internal Revenue Code.
- (2) Two (2) or more partnerships (as defined in IC 6-3-1-19), including limited liability companies and limited liability partnerships, that have the same degree of mutual ownership as an affiliated group described in subdivision (1), as determined under the rules adopted by the department.

The right to a deduction under this section is not assignable to an individual or entity that is not part of the same affiliated group as the

assignor.

(d) The following provisions apply to a deduction for a receivable treated as uncollectible debt under subsection (a):

- (1) The deduction does not include interest.
- (2) The amount of the deduction shall be determined in the manner provided by Section 166 of the Internal Revenue Code for bad debts but shall be adjusted to exclude:
 - (A) financing charges or interest;
 - (B) uncollectible amounts on property that remain in the possession of the distributor until the full purchase price is paid;
 - (C) expenses incurred in attempting to collect any debt; and
 - (D) repossessed property.
- (3) The deduction shall be claimed on the return for the period during which the receivable is written off as uncollectible in the claimant's books and records and is eligible to be deducted for federal income tax purposes. For purposes of this subdivision, a claimant who is not required to file federal income tax returns may deduct an uncollectible receivable on a return filed for the period in which the receivable is written off as uncollectible in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant were required to file a federal income tax return.
- (4) If the amount of uncollectible receivables claimed as a deduction by a distributor for a particular reporting period exceeds the amount of the distributor's taxable wholesale sales for that reporting period, the distributor may file a refund claim under IC 6-8.1-9. However, the deadline for the refund claim shall be measured from the due date of the return for the reporting period on which the deduction for the uncollectible receivables could first be claimed.
- (5) For purposes of reporting a payment received on a previously claimed uncollectible receivable, any payments made on a debt or account shall be applied first proportionally to the taxable wholesale price of the property and the part of the receivable attributable to the tax imposed by this chapter, and secondly to interest, service charges, and any other charges.

As added by P.L.211-2007, SEC.38.

IC 6-7-2-15

Registration of manufacturer, importer, broker, or shipper distributing to distributor

Sec. 15. Every manufacturer, importer, broker, or shipper of tobacco products must register with the department before it sells or otherwise distributes tobacco products to distributors.

As added by P.L.96-1987, SEC.7.

IC 6-7-2-16

Manufacturer, importer, broker, or shipper; proof of distributions

Sec. 16. Every manufacturer, importer, broker, or shipper of tobacco products that sells or otherwise distributes tobacco products to distributors shall, before the fifteenth day of each month, submit proof to the department of all of its sales or other distributions to distributors in the preceding month.

As added by P.L.96-1987, SEC.7.

IC 6-7-2-17

Deposit of revenues

Sec. 17. The department shall deposit twenty-five percent (25%) of the taxes, registration fees, fines, or penalties collected under this chapter in the affordable housing and community development fund established by IC 5-20-4-7. The remainder of the taxes, registration fees, fines, or penalties collected under this chapter shall be deposited as provided in IC 6-7-1-28.1.

As added by P.L.96-1987, SEC.7. Amended by P.L.234-2007, SEC.202.

IC 6-7-2-18

Distribution without a license; offense

Sec. 18. A person who distributes tobacco products without a license issued under this chapter commits a Class B misdemeanor.

As added by P.L.96-1987, SEC.7.

IC 6-7-2-19

Manufacturer noncompliance; offense

Sec. 19. A manufacturer of tobacco products who does not comply with the requirements of section 15 or 16 of this chapter commits a Class B misdemeanor.

As added by P.L.96-1987, SEC.7.

IC 6-7-2-20

Record keeping violations

Sec. 20. A distributor who does not comply with the requirements of IC 6-8.1-5-4 commits a Class B misdemeanor.

As added by P.L.96-1987, SEC.7.

IC 6-7-2-21

Distributor offenses

Sec. 21. A distributor who knowingly:

- (1) acts as a distributor without a license;
- (2) makes a false statement in a report under this chapter; or
- (3) does not pay the tax for which the distributor is liable under this chapter;

commits a Class B misdemeanor. However, the offense is a Level 6 felony if it is committed with intent to evade the tax imposed by this chapter or to defraud the state.

As added by P.L.96-1987, SEC.7. Amended by P.L.158-2013, SEC.103.

IC 6-7-2-22

Listed tax

Sec. 22. The tax imposed under this chapter is a listed tax for purposes of IC 6-8.1.

As added by P.L.96-1987, SEC.7.

IC 6-7-2-23

Federal sales; exemption

Sec. 23. The sale of tobacco products to the United States or an agency or instrumentality thereof is exempt from the tobacco products tax.

As added by P.L.96-1987, SEC.7.